

**Remarks**

Claims 37-45 and 48-58 have been cancelled by the above amendment. The only remaining claims (46 and 47) have been rewritten in independent form incorporating all of the limitations of the claims on which they were previously dependent.

1. Claims 37-58 were rejected on the ground of non-statutory obviousness-type double patenting as being unpatentable over claims 1-19 and 31-35 of US Pat. No. 6,828,294 the parent of the present application in view of Hei et al. (US Pat. No. 6,663,902).

This rejection is improper since the '294 patent is not available as a reference. There are two reasons, either of which is sufficient, for removal of this reference. These are:

- (1) The present application is a divisional of the application that resulted in the '294 patent. See, in this regard, applicant's attorney's file memo and the Examiner's amendment/statement of reasons for allowance in the '249 patent. Copies of both of these are attached. The prosecution in the parent application was handled in a series of phone calls between the Examiner Petruncio and applicant's attorney. In order to deal with the backlog of pending applications, the Office has encouraged Examiners to handle relatively routine prosecution matters in this way. Applicant's attorney was willing to go along with such an approach. If the result of this procedure is going to be what the Examiner alleges in rejecting the present application, the telephone approach needs to be changed. The fact that Examiner Petruncio did not specifically refer to the restriction requirement in his Examiner's amendment and statement of reasons for allowance and used the generic term continuing instead of the specific "divisional" is being used by the present Examiner to attempt to reject this application.
- (2) The filing dates of the application that issued as the '249 patent and the present application are identical. The claims filed in this application were identical to those originally filed in the '249 application (except for insignificant numbering changes). Thus the '249 patent is not available as a reference against the present application. The Examiner's citation of Geneva vs. GlaxoSmithKline does not support the Examiner's conclusion for a variety of reasons. Most notably, that case was decided based on the lack of consonance between the divided group of claims and those subject to an earlier restriction requirement. That fact situation does not exist in the present application where the claims in the divisional are identical to those subject to the restriction requirement in the parent case.

Claims 37-45, 48-50 were rejected under 35 USC 103(a) as being unpatentable

over Dankowski *et al.* (US Patent No. 4,879,057).

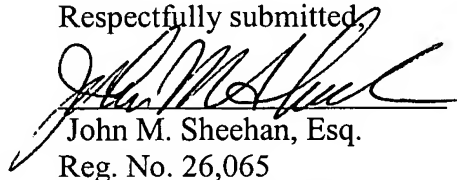
Although applicant does not agree with the Examiner's conclusion, these claims have been cancelled to reduce the issues for consideration on appeal should the Examiner persists in rejecting the present application.

In view of the above amendments, Applicants request reconsideration, withdrawal of the rejection, and allowance of the presented claims.

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of this application, the Examiner is requested to call the undersigned.

May 14, 2007

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'John M. Sheehan', is written over a horizontal line.

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